

Ex. 26



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

AUG 15 2013

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

WW-16J

Brian Schaper, Registered Agent
All American RV Resorts I, LLC
2042 Broadway
Fort Wayne, Indiana 46802

Subject: U.S. EPA Comments on July 9, 2013, Response To The United States
Environmental Protection Agency for Blue Lake Campground

Dear Mr. Schaper:

The U. S Environmental Protection Agency (EPA) has reviewed your July 9, 2013, response to our March 13, 2013, Administrative Compliance Order (Order) and have found it unacceptable. You have proposed no wetland restoration. You have proposed instead, a two acre wetland mitigation in an existing wet meadow completely dominated by the invasive *Phalaris arundinacea* (reed canary grass) that abuts a legal drain. This mitigation proposal is unlikely to succeed. First, it is likely that this is an existing 'wet meadow' wetland and any 'enhancements' would only receive partial, if any credit. Second, your proposed site lies astride of a legal drain which you will not affect. In other words, the site is likely at least partially drained and will remain so. Third, whatever time limited attempts are made to remove an invasive invader – reed canary grass – the grass will simply move back in from the many acres of reed canary grass surrounding this area.

As a general policy matter, you may not keep an alleged illegal fill for campground pads and amenities (a non water dependent land use) that would likely not have received a Section 404 permit. You have readily available practical alternatives in the undeveloped land elsewhere on-site that achieves your project purpose, i.e., expanded campground pads and amenities (see 40 C.F.R. Part 232 – the Section 401(b)(1) guidelines).

Regarding your argument that the site's prior history of disturbance eliminated site wetlands, the record, including information you supplied, does not support your conclusion that all site wetlands were so disturbed by the actions of the prior owner, that they would be classified as 'upland'. The enclosed March 31, 2002, U.S. Geological Survey aerial photograph (leaf off), taken less than a month after your purchase of the property, serves as a baseline and is in apparent contradiction to your assertions. The area north of the northernmost cul-de-sac seen in this image shows no development west of the cul-de-sac and it is vegetated – this is where you have currently placed four trailer units atop fill material. A thumb shaped and vegetated wetland is apparent in the photo's center (its central core remains today) and it appears to extend and

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narrow to the west and waterward almost to the east edge of the aforementioned cul-de-sac – this is where you have filled on its three sides for trailer pads, lawns and fire pits. Inundated areas, with little or no vegetation, exist to the east and south of the thumb shaped/vegetated wetland. In contrast, what appear to be recently filled areas exist immediately to the south and east where the gazebo and roadways now lie, respectively. It is relatively recent fill because there is no vegetation growing from it (this may be your beach area). EPA acknowledges that the thumb shaped/vegetated wetland has signs of disturbance within and on its borders, but these are small areas and appear largely to be structures and not fill material. If these disturbed areas are what you are referring to in your response, they are not part of EPA's allegations of discharges of fill material without a permit.

There are many other aerial photographs that corroborate the March 31, 2002, U.S. Geological Survey aerial photograph (see the enclosed 1998 photo, 2003 – Exhibit 2 in the Order (for the area east of the thumb shaped/vegetated wetland), 2005 – Exhibit 3 in the Order, 2006 – Exhibit 5 to the Order (for the area east of the thumb shaped/vegetated wetland), 2007 – Exhibit 6 to the Order (for the area east of the thumb shaped/vegetated wetland) and Exhibits 8 – 10 (for the area east of the thumb shaped/vegetated wetland)). In addition, the Order's Exhibits 2 – 8 show the area west of the northmost cul-de-sac in trees, not in fill and that includes the leaf off aerial photographs. Our interpretation of these aerial photographs, show signatures of wetness before and after your purchase of the property for the wetland areas to the east and south of the thumb shaped/vegetated central wetland.

While aerial photographic interpretation is one tool to determine antecedent site conditions, analysis of the alleged fill areas and remaining site wetlands was also completed by State and Federal investigators. EPA, the Corps and IDEM confirmed existing wetland outside and immediately adjacent to the alleged filled areas. There is evidence of wetlands remaining viable on-site in that area east and south of the central thumb shaped/vegetated wetland despite disturbance. Exhibit 7 from the Order shows fill material in this area, yet, in succeeding years, the area maintains clear signatures of wetness (see Exhibits 8 and 9/10) suggesting that while fill may have been placed, it was not sufficient to eliminate its wetland status. Only after additional filling subsequent to the May 2011 aeriels (Exhibits 9/10) and prior to the site inspections by the Corps and IDEM in the fall of 2011, was the wetland status eliminated. EPA has confirmed this most recent filling from other governmental sources that were on-site and took photos of the fill piles before they were leveled and graded into the wetland area.

With regard to new information submitted in your response, you need to provide additional information that should have been supplied in response to the Request for Information sent to you in August 2012. For the additional information, please provide the date of all photographs, identify the photographer and, to the best of the photographer's ability, the location and direction from whence the photograph was taken - in particular, Figures A-3 and A-5. The poorly resolved copies of Figures A-6 and A-7, which EPA has reviewed in their original prints, do not alter our findings. Your Figure A-10 serves to support our findings and further documents fill in wetland areas after this U.S. Fish & Wildlife Service interpretation.

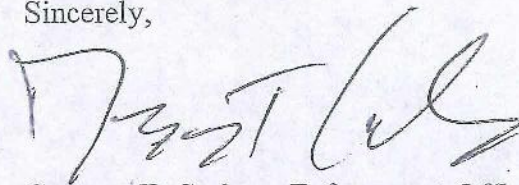
While EPA and the other permit agencies may permit some amount of older fill material to remain, all fill areas north of the northernmost cul-de-sac and all fill areas to the south and east

of the central thumb shaped/vegetated wetland (and west of the road and north of the gazebo road) should be restored. Any remaining fill material that may be permitted would need to be mitigated for.

Thus, you need to resubmit a wetland restoration plan, and a mitigation plan for the remainder of the fill material that is not part of the wetland restoration plan within three weeks of your receipt of this letter. If you do not submit a revised plan by that date, EPA will consider its enforcement options including a referral of this matter to the U.S. Department of Justice, for injunctive relief and penalties or an administrative penalty action for up to \$177,500.00.

If you have any questions, please contact me for technical matters and Peter Felitti, Associate Regional Counsel, at (312) 886-5114, for legal questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Greg T. Carlson', is written over the typed name.

Gregory T. Carlson, Enforcement Officer
Watersheds and Wetlands Branch
U.S. EPA - Region 5

Enclosure: April 5, 1998 and March 31, 2002, aerial photographs

cc: Peter Felitti, C-14J
Scott Matthews, U.S. Army Corps of Engineers, 8902 Otis Ave. (Suite S106B),
Indianapolis, IN 46216
Marty Maupin, IDEM, 100 N. Senate Ave., MC65-42 WQS IGCN 1255,
Indianapolis, IN 46204
Joseph D. Bishop, PE, Bishop Engineering & Development, 268 S. Briant St.,
Huntington, IN 46750



Google Earth Pro

feet 1000
meters 300



Image Date: APRIL 5, 1998



Google Earth Pro

feet | 900
meters | 300



Image Date: March 31, 2002

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Brain Schaper, Registered Agent
All American RV Resorts I, LLC
2042 Broadway
Ft. Wayne, Indiana 46802

2. Article Number

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PS Form 3811, March 2001

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DA Schaper

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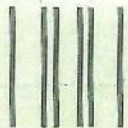
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Chicago, Illinois 60624

